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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

20 Cr. 412 (AT)

6 TIMOTHY SHEA,

7 Conference

8 Defendant.

9 -----x  
10  
11 New York, N.Y.  
12 May 6, 2022  
13 4:00 p.m.

14 Before:

15 HON. ANALISA TORRES,

16 District Judge

17 APPEARANCES

18 DAMIAN WILLIAMS

19 United States Attorney for the  
20 Southern District of New York

21 ROBERT B. SOBELMAN

22 ALISON MOE

23 NICOLAS ROOS

24 Assistant United States Attorney

25 JOHN C. MERINGOLO

JOANNA B. CAPPELLINO

CLARA KALHOUS

Attorneys for Defendant

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1 (The Court and all parties present remotely)

2 THE COURT: Good afternoon. We're here in the matter  
3 of United States v. Timothy Shea.

4 Counsel, please make your appearances.

5 MR. SOBELMAN: Robert Sobelman, Alison Moe and  
6 Nicholas Roos for the United States. Good afternoon, your  
7 Honor.

8 MS. CAPPELLINO: Good afternoon, your Honor. Anjelica  
9 Cappellino, John Meringolo and Clara Kalhous on the telephone  
10 line for defendant Timothy Shea, who is also present.

11 THE COURT: The videoconference is open to the public  
12 just as a courtroom would be, but you are not permitted to  
13 rebroadcast or record the proceeding.

14 I understand that Mr. Shea has agreed to appear by  
15 videoconference; is that correct?

16 MS. CAPPELLINO: Yes, your Honor.

17 THE COURT: Mr. Shea, you know that you would be  
18 permitted to have an in-person appearance, but you have agreed  
19 to have this matter heard by videoconference.

20 Is that correct, Mr. Shea?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: I'm going to first address the  
23 government's motion *in limine*.

24 First, the government asks the Court to preclude  
25 defendant from offering evidence in support of the argument

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1 that the victims of the alleged scheme are at fault because  
2 they acted negligently or gullibly.

3 Defendant contends that he will not advance a "victim  
4 blaming" defense. But, he argues that he should not be  
5 precluded from questioning alleged victims about their dealings  
6 with defendant or his alleged co-conspirators, and their  
7 understanding of the way in which their donations would be  
8 used. ECF No. 171 at 1-3.

9 Because defendant disclaims any intention of asserting  
10 a defense based on the victims' blameworthiness, the  
11 government's motion is denied as moot. Any concerns about the  
12 admissibility of specific questions shall be addressed at  
13 trial.

14 Second, the Government seeks to preclude Defendant  
15 from offering evidence or argument concerning the potential  
16 punishment he may face if convicted. ECF No. 166 at 5.

17 Again, defendant represents that he "does not intend  
18 to raise for the jury the potential punishment that he is  
19 facing if convicted. " But he argues that he should be allowed  
20 to raise the issue of the possible sentences faced by  
21 cooperating witnesses, some of whom may have pleaded guilty to  
22 the offenses with which he is charged. ECF No. 171 at 3.

23 Defendant shall be permitted to elicit testimony  
24 related to the potential sentences faced by cooperating  
25 witnesses to the extent such testimony bears on their reasons

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1 for testifying at trial. But defendant may not make any  
2 arguments related to his potential punishment.

3 Accordingly, the Government's motion is granted.

4 Third, the Government requests that the Court preclude  
5 defendant from offering evidence that would "invite  
6 nullification." According to the Government, such evidence  
7 would include testimony about aspects of defendant's background  
8 that "may tend to elicit the jury's sympathy," and evidence  
9 about Stephen Bannon's pardon, which the government argues may  
10 "invite the jury to engage in impermissible speculation." ECF  
11 No. 166 at 7-9.

12 As for evidence about defendant's background,  
13 defendant contends that he should be permitted to provide  
14 relevant background evidence if he chooses to testify, and that  
15 he should be allowed to present relevant evidence about his  
16 wife if she is referenced during the trial. ECF No. 171 at 6,  
17 7.

18 Based on the parties' submissions, the Court cannot  
19 conclude at this time that evidence related to defendant's  
20 background would be "clearly inadmissible on all potential  
21 grounds. *United States v. Ozsusamlar*, 428 F. Supp. 2d 161, 164  
22 (S.D.N.Y. 2006). Any concerns about the admissibility of such  
23 evidence shall be addressed at trial.

24 As for evidence related to Bannon's pardon, defendant  
25 contends that the pardon will be relevant because defendant

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1 intends to call Bannon to testify at trial. Moreover defendant  
2 argues that such evidence will not invite jury nullification.  
3 ECF No. 171 at 6 to 7.

4 The Court agrees with defendant that evidence related  
5 to Bannon's pardon may be admissible if he testifies because  
6 such evidence may help avoid juror confusion about why Bannon  
7 is no longer a defendant in this case. Accordingly, the  
8 Government's motion is denied.

9 Fourth, the Government asks the Court to preclude  
10 defendant from offering any evidence and argument concerning  
11 the Government's motives in prosecuting him and any claim that  
12 he is being selectively prosecuted. ECF No. 166 at 5 to 7.  
13 defendant represents that he will not assert a claim of  
14 selective prosecution, but he argues that he should be  
15 permitted to reference the fact that Bannon received a pardon  
16 and that individuals associated with the case may have some  
17 name recognition where defendant does not. ECF No. 171 at 4 to  
18 5.

19 Because Defendant disclaims raising a selective  
20 prosecution defense, this aspect of the Government's motion is  
21 denied as moot. But defendant shall be precluded from offering  
22 any evidence intended to attack the government's motives for  
23 charging him in this matter. Accordingly, this aspect of the  
24 government's motion is granted. Moreover evidence related to  
25 Bannon's pardon may be admissible for the reasons already

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1 stated, and the Court shall address the admissibility of  
2 questions related to "name recognition" should the issue arise  
3 at trial.

4 I will now turn to Defendant's motions.

5 Defendant's first motion asks the Court to preclude  
6 the government from introducing evidence that defendant  
7 conspired with his co-defendant, Brian Kolfage, and defendant's  
8 wife, to create fraudulent backdated documents after they  
9 learned of the grand jury's investigation.

10 Defendant argues (1) that the evidence is irrelevant  
11 to the charged crimes in the Indictment filed in August 2020,  
12 and (2) that the Government will not be able to introduce  
13 evidence related to the documents because communications  
14 between defendant and his wife are protected by the spousal  
15 communications privilege, and co-conspirator testimony cannot  
16 be introduced without first establishing that defendant  
17 participated in a conspiracy. ECF No. 170 at 6 to 7.

18 After the filing of Defendant's motions, the  
19 government added new charges in a Superseding Indictment dated  
20 April 21, 2022, which included charges for "falsification of  
21 records" by means of backdating certain documents. ECF No.  
22 179. Accordingly, defendant's argument as to the relevance of  
23 the backdated documents is rejected and his motion is denied as  
24 moot.

25 As for the other aspects of Defendant's motion, the

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1 government contends that communications between defendant and  
2 his wife are not protected by the spousal communication  
3 privilege because those communications were designed to further  
4 criminal activity. The government also argues that the Court  
5 may address any concerns about defendant's participation in a  
6 conspiracy at trial by conditionally admitting any objected-to  
7 exhibits or statements and then accepting them into evidence  
8 after the government has proven the existence of a conspiracy.  
9 ECF No. 173 at 5 to 6.

10 The Court agrees with the Government that  
11 communications between defendant and his wife may be admissible  
12 if they included third parties, or, under the "joint  
13 participation exception" to the spousal communication  
14 privilege, to the extent that defendant's wife is testifying  
15 willingly concerning their joint criminal activities. *United*  
16 *States v. Estes*, 793 F.2d 465, 468 (2d Cir. 1986).

17 Moreover, the Court also agrees that it should not  
18 preclude the government from offering co-conspirator evidence  
19 at this time. The Court shall first admit such evidence  
20 conditionally, and then, if the government establishes the  
21 existence of a conspiracy and defendant's participation in it  
22 at trial, the evidence shall be admitted.

23 Accordingly, defendant's motion is denied.

24 Second, defendant asks the Court to preclude the  
25 government from offering evidence that defendant and Kolfage

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1 allegedly misappropriated \$38,500 from We Build the Wall  
2 through an alleged loan to Winning Energy, LLC, an Energy drink  
3 business owned by Shea, because it does not constitute direct  
4 evidence of the charged conspiracies. ECF No. 170 at 7 to 9.

5 The Government contends that the misappropriation of  
6 the money is admissible as direct proof of the wire fraud  
7 conspiracy because, as the superseding indictment alleges  
8 defendant secretly misappropriated We Build the Wall's funds  
9 for Winning Energy, which establishes that defendant and his  
10 co-conspirators acted in a manner contrary to the  
11 representations made to the donors. Moreover, this evidence is  
12 direct proof of the honest services fraud component of Count  
13 One in the superseding indictment because it would show that  
14 defendant conspired with Kolfage to divert money from We Build  
15 the Wall to Winning Energy, and that Kolfage received a  
16 kickback from Winning Energy. ECF No. 173 at 7 to 8.

17 The Government shall not be precluded from offering  
18 evidence that money was transferred from We Build the Wall to  
19 Winning Energy. Such evidence supports the charges in the  
20 superseding indictment. Accordingly, defendant's motion is  
21 denied.

22 Third, defendant requests that the Court preclude the  
23 government from introducing evidence that defendant failed to  
24 disclose some of his income to the IRS. Defendant argues that  
25 such evidence is inadmissible because he has submitted a plea

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1 of not guilty and, when a defendant unequivocally relies on a  
2 defense that he did not do the charged act at all... evidence  
3 of other acts is not admissible for the purpose of proving the  
4 intent or knowledge with which he acted. Additionally,  
5 defendant contends that filing a tax return with missing income  
6 is irrelevant because it does not indicate the source of the  
7 alleged income. ECF No. 170 at 5, 9 to 11.

8 The government argues that defendant's failure to  
9 report income from We Build the Wall is admissible because it  
10 shows that he understood that this money was not a legitimate  
11 source of income, and that, therefore, it shows his intent to  
12 defraud. Moreover, the government contends that this evidence  
13 is relevant to rebut the anticipated defense that defendant  
14 believed his transactions were legitimate and to rebut any  
15 claims of accident or mistake.

16 The government also asserts that defendant has not  
17 unequivocally denied his involvement in the financial  
18 transactions at issue. And the government contends that the  
19 evidence is not inadmissible under Rule 403 because it is not  
20 more salacious than the charged crimes. ECF No. 173 at 9 to  
21 12.

22 The Court agrees with the government that evidence  
23 related to defendant's tax records may be admitted. Such  
24 evidence tends to show that Defendant knew the funds he  
25 received were illegitimate and that he took pains to conceal

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1 them. See *United States v. Bergstein*, 788 F. App'x 742, 745  
2 (2d Cir. 2019). Moreover, the mere fact that defendant entered  
3 a plea of not guilty does not amount to a claim that he did not  
4 commit the acts that constitute the charged offenses. See  
5 *United States v. Paulino*, 445 F.3d 211, 221 to 22 (2d Cir.  
6 2006). And defendant has not otherwise shown that his  
7 knowledge or intent are not in dispute. Additionally, the  
8 Court agrees that such evidence should not be excluded under  
9 Rule 403 because it is not "more sensational or disturbing"  
10 than the charged crime, a factor considered important in prior  
11 cases. See *United States v. Roldan-Zapata*, 916 F.2d 795, 804  
12 (2d Cir. 1990).

13 Accordingly, defendant's motion is denied.

14 Fourth, defendant asks the Court to preclude the  
15 government from introducing evidence related to a \$59,700  
16 COVID-19 economic relief loan he obtained for Ranch Property  
17 Marketing and Management, which I shall refer to as RPMM, the  
18 entity the Government alleges is a shell company set up by  
19 defendant to launder money to Kolfage.

20 Defendant argues that the loan was legitimately  
21 obtained and is irrelevant to the charged conduct, and that he  
22 does not dispute his ownership of RPMM. And, he contends that  
23 attempts by the government to show that the loan was obtained  
24 through misrepresentations would create undue delay and  
25 confusion under Rule 403, and would constitute impermissible

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1 404(b) evidence. ECF No. 170 at 11 to 13.

2 The government argues that the loan application is  
3 admissible because it is direct proof that defendant controls  
4 RPMM. And although defendant asserts that the issue of his  
5 ownership of RPMM will not be in dispute there is presently no  
6 agreement between the parties that defendant owns, operates,  
7 and controls the funds of RPMM. Moreover, the government  
8 contends that evidence related to the loan shows that RPMM was  
9 not a legitimate business and that the defendant used it as a  
10 vehicle for committing fraud. ECF No. 173 at 12 to 13.

11 Although the Court agrees that the Government may  
12 offer the loan application as evidence of defendant's ownership  
13 and control over RPMM, the Court holds that the government may  
14 not introduce evidence that the loan was obtained through  
15 misrepresentations or fraud. Such evidence does not properly  
16 support an inference that defendant knowingly participated in  
17 the charged fraudulent scheme because the "other act is not  
18 sufficiently similar to the conduct at issue." *United  
19 States v. Gordon*, 987 F.2d 902, 909 (2d Cir. 1993).

20 Accordingly, defendant's motion is granted in part and  
21 denied in part.

22 Fifth, defendant asks the Court to preclude the  
23 government from offering evidence that he told a witness that  
24 he believed that his co-defendant, Andrew Badolato, was  
25 cooperating with the government and expressed that Badolato

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1 should "watch his back" because defendant "knows people in a  
2 New York mafia crime family." ECF No. 170 at 13 to 15.

3 In a May 5, 2022 letter submitted to the Court under  
4 seal, the government states that it will not seek to offer  
5 Testimony related to this alleged threat at trial.

6 Accordingly, defendant's motion is denied as moot.

7 Sixth, defendant asks the Court to preclude the  
8 government from offering the testimony of Dustin Palmer whom  
9 the Government intends to call as an expert "in money  
10 laundering and compliance with anti-money laundering  
11 regulations." Defendant contends that Palmer's testimony  
12 should not be admitted because it is an inappropriate subject  
13 matter for expert testimony and because the government did not  
14 provide adequate notice. ECF No. 183.

15 The Government argues that Palmer's testimony is  
16 admissible because it is about "widely-recognized money  
17 laundering typologies" and will assist the jury in  
18 understanding the evidence and determining important facts in  
19 issue and because they provided sufficient notice. ECF No.  
20 200.

21 The Court agrees with the Government that Palmer's  
22 testimony is admissible. Courts in this Circuit have routinely  
23 held that experts can testify about money laundering techniques  
24 in criminal cases involving a money laundering charge. See,  
25 e.g., *United States v. Monaco*, 199 F.3d 1324, 1999 WL 980946,

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1 at \*2 to 3 (2d Cir. 1999); *United States v. Nektalov*, No. 03  
2 Cr. 828, 2004 WL 1469487, at \*3 (S.D.N.Y. June 30, 2004).

3 The Government intends to offer Palmer's testimony to  
4 provide the jury with context with which it can consider the  
5 evidence in this case. ECF No. 200 at 7. Such background  
6 information will be helpful to the jury because the mechanics  
7 of money laundering, particularly in white collar cases, are  
8 beyond the understanding of the average juror. See *Monaco*,  
9 1999 WL 980946, at \*2 to 3. Moreover, the government asserts  
10 that it will not ask Palmer about defendant's conduct or other  
11 evidence introduced at trial, ECF No. 200 at 9, which  
12 alleviates concerns of Palmer becoming a summary witness. See  
13 ECF No. 183 at 4 to 5.

14 The Court also does not find that the probative value  
15 of Palmer's testimony will be substantially outweighed by  
16 unfair prejudice or juror confusion because there is no  
17 indication that Palmer will "stray from the scope of his  
18 expertise," see *United States v. Dukagjini*, 326 F.3d 45, 54 (2d  
19 Cir. 2003), and the Court sees no reason why general testimony  
20 about money laundering techniques will prejudice defendant. To  
21 the extent any issues arise at trial, they may be addressed by  
22 a limiting instruction.

23 Additionally, the Court rejects the argument that the  
24 government provided insufficient notice of Palmer's testimony.  
25 The government's April 17, 2022 notice describes Palmer's

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1 qualifications, sets forth the subjects about which he is  
2 expected to testify, and provides a summary of his testimony.  
3 See ECF No. 200 Exhibit 1. The Court considers this sufficient  
4 under Federal Rule of Criminal Procedure 16(a)(1)(G). See  
5 *United States v. Kidd*, 385 F. Supp. 3d 259, 262 to 63 (S.D.N.Y.  
6 2019). But to the extent the April 17 notice contained any  
7 deficiencies, the government's submission in opposition to  
8 defendant's motion alleviates these concerns.

9 Accordingly, defendant's motion is denied.

10 Trial shall commence on Monday, May 16th. On Monday  
11 through Friday, court will be in session from 9:00 a.m. to  
12 5:00 p.m. with a break for lunch between one and 2:00 o'clock.

13 Do the parties anticipate that the trial will carry  
14 over into the following week?

15 MR. SOBELMAN: Your Honor, it likely will. The  
16 government is hopeful that we will rest the first week. But it  
17 is unlikely that any defense case, closings, charge conference  
18 would be able to be accomplished within that week. Although we  
19 are focused on slimming our case down as much as we can.

20 THE COURT: Does the defense have anything to add?

21 MR. MERINGOLO: JUDGE, we haven't made a decision as  
22 yet of whether we are going to put a case on. If we did put a  
23 case on, we would not need more than a day. However, if the  
24 defendant did testify, it may go over a day just because of the  
25 cross-examination, but I don't think we would need more than a

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1 day.

2 MR. SOBELMAN: Your Honor, I may add that my estimate  
3 is conditioned on us being able to finalize the stipulations  
4 that we began discussing with the defense. If for some reason  
5 we can't reach agreement on some or all of those, we anticipate  
6 the trial to be substantially longer than the current estimate.

7 THE COURT: Well, if you should not reach agreement on  
8 reasonable, typical stipulations, please let me know.

9 MR. MERINGOLO: Yes, Judge. Seven of the 11, I think  
10 we have agreed. One where we're consenting to venue we're not  
11 going to agree, things like that. We're not going to be  
12 unreasonable. We've been trying cases in this courthouse for  
13 20 years and we have never been unreasonable. But we're not  
14 going to just give them the venue. We just can't do that.

15 THE COURT: Are there any further applications at this  
16 time?

17 MR. MERINGOLO: From the defense, your Honor, we've  
18 been speaking -- actually, today, I was in court for three  
19 hours, unfortunately -- your Honor's order of us turning over  
20 Rule 16, the Rule 16 we would have, we don't have any other  
21 Rule 16 but for what the government has given us in their  
22 Rule 16 discovery. So do we have to reproduce everything that  
23 they've given us? I mean, they have given it to us and we're  
24 not going to give them anything else. Maybe there's a few  
25 pictures from an investigator going down to the wall, but I

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1 think we're going to stipulate to the website of the wall, so I  
2 don't think that will be relevant, but I'll turn them over.

3 THE COURT: Mr. Sobelman.

4 MR. SOBELMAN: Your Honor, we're not asking that the  
5 defense be ordered to just simply produce back to us items we  
6 produced in discovery. We would ask that in advance of  
7 trial -- Monday, ideally -- they provide marked exhibits of the  
8 items they intend to offer at trial, whether they're from our  
9 discovery productions or not.

10 MR. MERINGOLO: Judge, we just got the rulings.

11 Specifically for the loan and the \$38,000 We Build A Wall loan,  
12 so I think the strategy and certain exhibits, those will  
13 actually be put in. It changes a part of our strategy. Do we  
14 know exactly everything?

15 I mean, we don't know the witnesses we're going to  
16 call. We don't know the exhibits. It's just hard -- without  
17 seeing the government's exhibits, it's very hard to say, okay,  
18 if the government gave us exhibit that was sent at 9:00 a.m., I  
19 want exhibit that was replied to at 10:00 a.m. It's just  
20 without seeing their exhibits, we're actually doing things in a  
21 vacuum.

22 MR. SOBELMAN: Your Honor, we intend to produce our  
23 preliminary set of exhibits today. We're not asking that they  
24 produce theirs before ours are produced, of course. But we do  
25 think a deadline of what they do intend to offer at the time of

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1 early next week would make sense. But of course, they can add  
2 as they might wish to revise their set of exhibits, in the same  
3 way that we do up to and sometimes during trial. But we would  
4 ask that the defense act in good faith to give us advanced  
5 notice so that if there's issues that we need to flag for the  
6 Court or potentially even brief, we're able to do that in  
7 advance of trial and not have to do that during trial.

8 THE COURT: When can the defense hand over its  
9 exhibits?

10 MR. MERINGOLO: Well, I'm sure we're going to get  
11 their exhibits late tonight, so we will start tomorrow morning,  
12 Judge. At latest -- if it could be on a rolling basis -- at  
13 latest, say, Wednesday afternoon.

14 THE COURT: That's acceptable. Wednesday afternoon is  
15 acceptable.

16 MR. MERINGOLO: And we will send our own stipulations  
17 on Monday, Judge.

18 THE COURT: All right, then.

19 MR. SOBELMAN: Your Honor, I have a couple of other  
20 items to raise, if that's all right.

21 THE COURT: Yes.

22 MR. SOBELMAN: Just briefly.

23 First, with respect to one of your Honor's rulings  
24 with regard to the defendant's family background. The  
25 government's understanding is that you reserved judgment on

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1 whether evidence of that sort might be admissible depending on  
2 how the trial goes and whether Mr. Shea decides to testify.

3 The government would ask that the defense be instructed not to  
4 include any of those facts in the opening statement, in light  
5 of the fact that your Honor has reserved on whether that  
6 evidence is admissible.

7 THE COURT: Does the defense intend to bring out  
8 background information that is atypical?

9 MR. MERINGOLO: No, Judge. We have never, never done  
10 that. I don't want to open the doors to a character case if I  
11 don't put the defendant on the stand. I mean, is Mr. Shea  
12 married to Amanda Shea? The answer is yes.

13 I mean, am I going to be precluded from doing that?  
14 Is he from -- when they don't see his family, I'll say Mr. Shea  
15 lives in Colorado, I'm going to say that in the opening,  
16 because when they don't see anybody in the gallery, they'll  
17 think that no one is supporting this guy.

18 MR. SOBELMAN: Your Honor, we have no objection to the  
19 fact that he's married to Amanda Shea or he lives in Colorado.  
20 What we're hoping to avoid is anything about his children, his  
21 parents, his faith, his community service, things that really  
22 will have no bearing and we don't anticipate will come out at  
23 the trial and that we think should be fronted for the Court  
24 before they're put before the jury in any way.

25 MR. MERINGOLO: Judge, I don't know his faith, I don't

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1 know if he does community service, so I won't say anything.

2 THE COURT: Just keep it to --

3 MR. SOBELMAN: Sorry, your Honor. Defense counsel  
4 conspicuously just left out reference his kids.

5 MR. MERINGOLO: Judge, everything seems to be so  
6 literal. We won't talk about his kids. If Mr. Shea testifies,  
7 I will say, are you married, yes, do you have any children,  
8 like everyone else in the world on direct that testifies would  
9 say.

10 THE COURT: Right. Those are the normal things that  
11 would be elicited. It would be not normal to ask him whether  
12 he had been in the Boy Scouts, something that is irrelevant.

13 MR. MERINGOLO: No, Judge.

14 THE COURT: Anything further?

15 MR. SOBELMAN: Yes, your Honor.

16 With respect to Mr. Bannon's pardon, I have asked a  
17 similar question, which is unless and until Mr. Bannon takes  
18 the stand, we would ask that there be no reference to the fact  
19 that he was part of the trial, including in the defense opening  
20 statement.

21 MR. MERINGOLO: Judge, we will not address  
22 Mr. Bannon's pardon unless Mr. Bannon testifies.

23 MR. SOBELMAN: Your Honor, let me just look at my  
24 list. Sorry, two other items.

25 First is we inquired earlier today, but didn't have a

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1 chance to connect with defense counsel, and he suggested  
2 raising with the Court when the defense intends to provide a  
3 witness list and when the defense intends to provide any  
4 Rule 26.2 materials, which like defense exhibits would be  
5 helpful I think for the parties and the Court for us to have  
6 these things in advance of trial so that if there are issues,  
7 we can raise them in a timely manner.

8 MR. MERINGOLO: By Monday, we'll let the government  
9 know if we're going to call an expert. Judge, it's unlikely  
10 the defense is going to call an expert.

11 The witness list, Judge, we don't even have their  
12 witness list. We may call people that they turned over on the  
13 3500 material. We have seen certain witnesses in there that I  
14 may want to call. But I don't have their witness list, so how  
15 can I give them my witness list?

16 MR. SOBELMAN: Sorry, Mr. Meringolo, maybe the  
17 disclosures were unclear, but the testifying witness 3500 was  
18 our witness list at the time that we produced it and  
19 nontestifiers are people that are not on our witness list at  
20 the time we produced it. If at any time you want an update,  
21 just let us know and we'll be glad to provide an update.

22 MR. MERINGOLO: Yes, they can provide an update.

23 Judge, when we will know -- for the defense as well as  
24 the prosecutor -- when will we know who will be the first  
25 witness, who will be the second witness? Will we just know the

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1 night before?

2 THE COURT: Mr. Sobelman, when do you plan to tell  
3 them?

4 MR. SOBELMAN: We're happy to confer with the defense.  
5 They haven't asked us this kind of information. As your Honor  
6 saw from the papers, there hasn't been as much communication  
7 between the parties as there might have been. We are happy to  
8 answer any questions the defense has.

9 MR. MERINGOLO: Judge, there's been the same amount of  
10 communication as there's been for my other 250 federal cases.  
11 There's nothing that we're doing. We're not trying to hide  
12 evidence or anything to that matter.

13 THE COURT: Is that it?

14 MR. MERINGOLO: That's it, Judge. Thank you so much.

15 MR. SOBELMAN: The government would ask that the  
16 defendant be allocuted on the fact that he received a plea  
17 offer from the government on March 25th, 2022, that he read it,  
18 discussed it with his counsel and declined to accept it.

19 THE COURT: When is it that you want this allocution  
20 to take place?

21 MR. SOBELMAN: Your Honor could do that right now or  
22 if your Honor prefers, it could happen at a later time before  
23 the trial. We just want to make sure it occurs before the  
24 trial begins.

25 THE COURT: My preference is that that should be done

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1 in person.

2 MR. SOBELMAN: That's one of the reasons we had hoped  
3 to have this in person, but we're happy to have it done at a  
4 later date if that's what the Court prefers.

5 Your Honor, just to make sure, defense committed to  
6 getting us his witness list on Monday? I just want to make  
7 sure the record is clear.

8 MR. MERINGOLO: No, we never committed to do that.  
9 Best guesstimate, by Wednesday.

10 MR. SOBELMAN: On the same timeline as the exhibits?

11 MR. MERINGOLO: Yes. The best we could do by  
12 Wednesday we're going to do, exhibits in the morning, Judge.

13 THE COURT: Your Honor, will 26.2 material be produced  
14 on the same time frame?

15 MR. MERINGOLO: We said Monday.

16 MR. SOBELMAN: There are no further issues from the  
17 government at this time.

18 Thank you, your Honor.

19 MS. CAPPELLINO: Thank you, Judge.

20 THE COURT: So we are going to start on time at  
21 9:00 a.m. on Monday the 16th. I will not have the panel  
22 immediately at 9:00 a.m., so we can do the allocution and take  
23 care of any housekeeping before we start the voir dire.

24 MS. CAPPELLINO: Thank you, Judge.

25 THE COURT: I wish all of you good health and I will

M56GsheC

1 see you on the 16th.

2 Thank you.

3 (Adjourned)

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